IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 22991 of 2015

Date of Decision: 29.10.2015

Tax Bar Association, Hisar

....Petitioner.

Versus

The State of Haryana and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE SHEKHER DHAWAN.

PRESENT: Mr. Sandeep Goyal, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondent-Department to modify the return forms/tax utility form uploaded on the official website www.haryanatax.com fixing rate of tax of lumpsum payment by including surcharge for the lumpsum dealers.

2. The State Government without making any amendment in the Haryana Value Added Tax Act, 2003 (in short "the Act") or in the Haryana Value Added Tax Rules, 2003 (hereinafter referred to as "the Rules") started insisting upon filing of e-returns on the official website www.haryanatax.com of the Department. The petitioner filed CWP No.

15499 of 2015 and this Court vide order dated 30.7.2015 (Annexure P-1) disposed of the said writ petition allowing the manual returns to be filed for the quarter in question and the date for filing of returns through e-filing or manually was extended upto 10.8.2015. Thereafter, the members of the petitioner-Association started filing e-returns for the quarter ending 30.9.2015 wherein it was found that for filing of returns in Form VAT R-6 in terms of Rule 49(9) of the Rules relating to lumpsum works contractor, the website only allowed the payment of tax @ 5.25% which included surcharge levied under Section 7A @ 5%. Under Rule 49 of the Rules, it has been provided that the lumpsum rate of tax 5% w.e.f. 12.8.2014 only is payable in lieu of tax payable under the Act. The notification issued for levy of additional tax/surcharge under Section 7A of the Act is applicable only to the dealers who are not lumpsum dealer and the same is pending consideration before this Court in VATAP No. 59 of 2019 for 19.11.2015. The petitioner-Association submitted a representation dated 26.8.2015 (Annexure P-2) to respondent No.2 for deletion of mandatory requirement from the return in Form VAT R-6 and VAT R-8, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved a representation dated 26.8.2015 (Annexure P-2) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the representation dated 26.8.2015 (Annexure P-2),

in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

October 29, 2015 **(SHEKHER DHAWAN)**
gbs **JUDGE**